DISCUSSION OF WORKMEN'S COMPENSATION LEGISLATION[1]

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MOST of the discussion of labor legislation is from the point of view of the laborer. I propose to talk about it for a few minutes from the point of view of the employer. In this, as in most other things, what helps the laborer probably also helps the employer, and what helps the employer probably also helps the laborer.

The theory of the workmen's compensation legislation is to abolish the employer's common-law liability for negligence and to substitute therefore a definite payment irrespective of negligence, which shall reach the workman or his dependents quickly and with small expense.

I believe the most enlightened managers of corporations are heartily in sympathy with the change from the employer's liability theory to the workmen's compensation theory. In fact, a great many of them are working under the workmen's compensation theory to-day. In the case of large corporations with a great many employes, it is surprising to find how rarely they consult their counsel with reference to their legal liability in cases of accident. They are not so much interested in the theoretical question as to where the legal liability rests as they are in the question whether or not they can get a fair settlement without the great waste of time and money which litigation involves. This is partly from a desire to maintain cordial relations with their workmen and it is partly a business proposition. A policy of fair settlement is cheaper than one of litigation.

Let us assume that 15 % of the accidents which occur in the business of a large manufacturing corporation are attributable to the negligence of the employer. At first blush it may seem

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that a change in the law which will make the employer liable for 100 % instead of for 15 % of the accidents will place upon the industry an intolerable burden. There are, however, two important offsetting considerations. In the first place, if the maximum amount which the employer is required to pay under the new system is smaller than the average amount which he is now required to pay in those cases in which he is legally liable, obviously he will be able to distribute the gross amount of his present payments over a wider number of people. In the second place, no intelligent employer could conduct a business under the old law under the assumption that he is put to no expense for the 85 % of the accidents for which he is not legally liable. Every manager of a large corporation realizes that whether or not he is technically liable for an accident, every accident costs him something. Most large corporations aim, therefore, to settle every case promptly, irrespective of their legal responsibility.

There are now in the United States, I believe, about ten workmen's compensation acts. We are also about to have a federal law applying to interstate carriers. These laws differ widely. They range all the way from a simple adoption of the workmen's compensation principle to elaborate schemes for state insurance. I should like to speak briefly about the principal features of four laws, those of New Jersey, New Hampshire, Massachusetts and Washington. I take these four laws because they represent a gradation away from the common law.

The New Jersey act simply substitutes for the employer's common-law liability for negligence a liability in all cases except where the injury or death of the workman is intentionally self-inflicted or is caused by intoxication. The maximum payment in case of death is three thousand dollars, spread over three hundred weeks and in case of total disability four thousand dollars spread over four hundred weeks. Specific payments are required to be made for specific injuries. There is nothing to compel the employer to insure. To protect the workman, however, the right to compensation is given a preferred lien on the assets of the employer. This act applies to every employer in the state. The act is optional, but the state makes an effort to compel employers to adopt the new law by abolishing certain

common-law defenses. Several of the largest manufacturing corporations in the state have voluntarily come under the law. I understand that those who have accepted the act estimate that it will add to their accident expense. This additional payment they are glad to make in the belief that substantially all of their disbursement will go to their workmen instead of a substantial portion being lost in transmission. The New Jersey act has been criticized as being unfair to the small employer of labor, expecially to the householder. Such an employer, if he comes under the new law, is unable to insure himself. He must insure in a casualty company and the casualty rates have been made surprisingly high when examined in view of the data of those large corporations who insure themselves. Some relief may possibly be expected when the casualty companies get accurate data as to the cost of the new law.

The act of New Hampshire, like the New Jersey law, is optional. It, however, applies only to selected employments in which the hazard is believed to be great. There is no requirement to insure, but the employer who accepts the act must satisfy the commissioner of labor of his financial ability or must file a bond to discharge any liability incurred under the act.

The Massachusetts law is also optional, but any employer desiring to come under the act is required to insure in a state employers' insurance association. The governing body of this association is in the first instance appointed by the state but is later to be chosen by the subscribers to the fund. The fixed rates of compensation which the act provides are paid out of the fund. The maximum payment is three thousand dollars spread over three hundred weeks in case of death and spread over five hundred weeks in case of total disability. The law provides, however, that if an employer prefers, he may insure in any liability insurance company authorized to do business in the state.

The law passed by the state of Washington and recently held constitutional by the supreme court of that state, is a compulsory law applicable only to certain industries defined as hazardous. Under the law employers in the industries covered by the act pay into a state insurance fund the premiums fixed by the law, and out of this fund a fixed compensation is paid to injured

workmen. It will be seen at once that this is a much further break from the old system than the Massachusetts law. Under the Massachusetts law the employer is required to insure if he would get the benefit of the new act, but he insures in a mutual company or private company that he himself selects. In Washington, however, he must insure with the state. An industrial insurance commission is created to administer the law. This commission has its main office at the state capital with power to establish branch offices. It has power to appoint assistants, including a traveling auditor, to whom the books, records and payrolls of the employers shall at all times be open. It may also employ one or more physicians in each county of the state. Whether Washington can find the men to run this complicated machinery may fairly be considered open to doubt.

I was rather disappointed to hear Mr. Dawson say in his very able address that the governor of New Jersey—or as Mr. Dawson puts it, "the most prominent candidate for the Democratic nomination for President of the United States"—was already dissatisfied with the New Jersey law, and was in favor of a law that goes the whole length of the Washington law. I am inclined to doubt whether Governor Wilson has gone this far. I have read his criticism of the high charges of the insurance companies, and I think that this criticism is in a measure just. The fact that the New Jersey law applies to everybody in the state—not only to hazardous industries, but to every householder—has made it an unpopular law, and it is the people who have had to pay very high insurance rates who are objecting.

I was also interested to hear Mr. Dawson say that the governor of Washington and the governor of Massachusetts, who attended the recent conference of governors, had not expressed at that conference any dissatisfaction with their laws. Perhaps it may have have had some bearing upon their attitude toward their own laws that neither of those laws had gone into effect at the time the conference of governors took place. The Washington law went into effect October 1st, and the Massachusetts law does not go into effect until January 1st next. The New Jersey law, however, had already been in effect at the time of the governors' conference, though only for a period of about

two months. All of us can remember other laws that reached their greatest popularity before they were put into operation.

It was a sound statement of Mr. Sherman's, in his address, that we must not object to these laws merely because we find faults in them. You will find faults in any one of the nine or ten workingmen's compensation laws that have already been passed in this country—very serious faults, because we are all experimenting with this question.

I shall read with great interest the full paper of Mr. Dawson's, in which he suggests a plan by which this question will be dealt with nationally. I shall read this paper carefully, because of Mr. Dawson's wide experience and well-known and deep interest in the whole subject; but I shall be sorry if Mr. Dawson's plan or any other man's plan is adopted for the whole United States. In a year or two we may have twenty or thirty state laws in addition to those that have already been passed. In addition we shall have the federal law dealing with interstate carriers, the preliminary outline of which was presented by Senator Sutherland's committee the other day. I prefer to see the people of the United States working with this problem in thirty or forty laboratories instead of in one. What we all want is to find a practical method of doing away with the frightful waste of our present accident system. We are interested in state accident-insurance projects only in so far as they are necessary to help solve the problem. To accomplish the desired result we may be driven to state insurance. I believe, however, that those laws have the best chances of success which aim to accomplish the purpose with the least change in the habits of the people. A law that fits a highly organized manufacturing state like Germany after twenty-five years of experience, may be very ill-suited to a western agricultural state.

There is one more point that I should like to emphasize in closing. Our goal should be the saving of the life, the leg, or the arm, and not the payment for them after they are gone. Our laws should be framed, if possible, to lead to the prevention of accidents. In this connection we may perhaps learn something from the German statistics, however doubtful may be their applicability to a country like ours. As you all know,

it is now about twenty-five years since Germany adopted the general principle of workingmen's compensation. Each ten years the imperial insurance office makes a report classifying the industrial accidents compensated under the new system. In a recent bulletin published by the United States Bureau of Labor the German reports for 1897 and 1907 are compared. These figures show that there has been a great increase in the percentage of accidents during the decade. The following figures show the sources of accidents in two years, a decade apart:

	1897	*1907*
Due to fault of the employer.	16.81%	12.06%
Due to fault of workmen	29.89	41.26
Due to fault of both employer and workmen . .	4.66	.91
Due to fault of fellow-workmen or third party. .	5.28	5.94
Due to general hazard of the industry	42.05	37.65
Other causes	1.31	2.18

It will be noted that in the decade the accidents due to the fault of the employer decreased from 16.81% to 12.06%. In the same period the accidents due to the general hazard of the industry decreased from 42.05% to 37.65%. This would indicate that the law was operating to make employers more careful. On the other hand, the accidents due to the fault of the workmen increased from 29.89% to 41.26%. In classifying the time when the accidents occurred it appeared that a larger percentage of accidents fall on Monday than on any other day of the week, and that of those that occur on Monday a larger percentage come in the morning than in the afternoon hours. The editors of the report suggest that this may be partly caused by the use of alcohol on Sunday and the fatigue following.

The great increase in the percentage of accidents under the German system and the increase in the percentage attributable to the workmen's fault, raises a serious problem. Many people believe that the rate of accident is bound to continue to increase with the increased use of machinery. We may be compelled to accept this conclusion, but we should do so reluctantly. Meanwhile the American states that have already passed workmen's compensation laws are in a fair way to make a contribu-

tion to this subject which Germany has not been able to make. We all recognize that mere negligence on the part of the employe should not bar him from recovery if the workmen's compensation theory is adopted. A great number of those accidents which are attributable to the negligence of the workman are undoubtedly cases in which a certain amount of relaxation or inattention is to be expected from any ordinary human being. There are cases, however, where the workman is not merely negligent, but commits an affirmative act of misconduct, such as wilfully declining to use a particular safety device. For example, take the case of the workman washing windows in a tall building who declines to use the safety strap. How shall such accidents be treated? Under the New Jersey law the workman receives his compensation unless the injury is self-inflicted or the workman was intoxicated; and under the Ohio law the compensation applies except where the injury was personally self-inflicted. In California, Massachusetts, New Hampshire and Wisconsin, however, the workman is disentitled if guilty of serious or wilful misconduct. The vital distinction between these two classes of laws will be noted at once. The states last referred to are trying to put an inducement upon the workman to refrain from misconduct. It is to be said against such a course that it may do away with one of the main advantages of the new system by making each accident still the subject of dispute and litigation. It is to be said in favor of such a course, however, that it may have the desirable effect of keeping down the accident rate.

It is in the working out of the details of these laws that we should see the great advantage of our form of government. With so many states each dealing with its own local affairs but each watching the other, and all watching the operation of a federal law applicable to interstate carriers, it may well be that we can do something for ourselves and for the world that Germany has not been able to do. That is what I mean when I say that we shall soon be working in thirty or forty laboratories. Is it too much to hope that the work will be done in the spirit of the laboratory worker, in the spirit of the scholar and with the scholar's patience?